

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2005-0873, Eric J. Wiener v. DKH, Inc. d/b/a City Line Auto Sales, the court on February 22, 2007, issued the following order:**

The plaintiff, Eric Wiener, sought to enforce a default judgment that he obtained against the defendant, DKH, Inc. d/b/a City Line Auto Sales, in a Pennsylvania court. The trial court granted the defendant's motion to dismiss, finding that the Pennsylvania court lacked personal jurisdiction over the defendant. The plaintiff appeals, arguing that the trial court erred in: (1) failing to find that the defendant's weekly trips to Pennsylvania salvage car auctions were sufficient to establish general personal jurisdiction over the defendant in Pennsylvania; (2) ruling that the trips were not related to the plaintiff's action; and (3) concluding that the "contract in issue was not, in fact, formed in Pennsylvania such that Pennsylvania had *specific* personal jurisdiction over Defendant." We affirm.

A court may not exercise personal jurisdiction over a defendant unless the state's long-arm statute authorizes it and the requirements of the Federal Due Process Clause are satisfied. Staffing Network v. Pietropaolo, 145 N.H. 456, 457 (2000). The long arm statutes of both New Hampshire and Pennsylvania authorize personal jurisdiction to the extent permitted by the Federal Due Process Clause. *Id.* at 458; Molnlycke Health Care AB v. Dumex Medical Surgical, 64 F. Supp. 2d 448, 450 (E.D. Pa. 1999).

Jurisdiction may be "general," where the defendant's contacts with the forum state are continuous and systematic, or "specific," where the cause of action arises out of or relates to the defendant's forum-based contacts. Staffing Network, 145 N.H. at 458.

The plaintiff first argues that the defendant's weekly trips to Pennsylvania to purchase cars combined with its Internet website and on-line auction site, which were available to residents of Pennsylvania, satisfied the requirements of general personal jurisdiction. The United States Supreme Court has held that "mere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of *in personam* jurisdiction in a cause of action not related to those purchase transactions." Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 418 (1984); see Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516, 518 (1923). Therefore, the defendant's regular trips to Pennsylvania to purchase cars are not sufficient to establish general personal jurisdiction. Nor do we find that Internet sales that are not directed specifically at Pennsylvania, but

rather are available to bidders from all jurisdictions, are sufficient to establish general jurisdiction. See Metcalf v. Lawson, 148 N.H. 35 (2002); Twitchell, The Myth of General Jurisdiction, 101 Harv. L. Rev. 610, 635 (1988) (traditional indicia of general jurisdiction are home base, agent for service of process, local office, or pursuance of business from tangible locale within state).

We turn next to the issue of whether the contacts were sufficient to establish specific personal jurisdiction. In determining whether the exercise of specific personal jurisdiction comports with due process, we consider whether: (1) the contacts relate to the cause of action; (2) the defendant has purposefully availed itself of the protections of Pennsylvania law; and (3) it would be fair and reasonable to require the defendant to defend the suit in Pennsylvania. Metcalf, 148 N.H. at 37. All three factors must be satisfied for the exercise of personal jurisdiction to satisfy the requirements of due process. Id. at 37-38.

The plaintiff argues that the defendant regularly traveled to Pennsylvania to purchase salvage autos and that the auto giving rise to the claim in this case was a salvage auto. Absent evidence that the salvage auto was purchased in Pennsylvania or offered for sale exclusively to Pennsylvania residents, we find the plaintiff's attempts to connect these two activities insufficient to establish jurisdiction. See id. at 39-40. The Pennsylvania cases cited by the plaintiff are distinguishable given that the contact in those cases was specifically directed at Pennsylvania residents. In this case, the vehicle was offered for sale on eBay. The information was accessible to users in all foreign jurisdictions; the defendant had no control over the jurisdiction of the ultimately successful bidder. We therefore conclude that the defendant did not purposefully avail itself of the protections of Pennsylvania law when it offered the vehicle for sale.

Nor are we persuaded that the contract was formed in Pennsylvania such that Pennsylvania had specific personal jurisdiction over the defendant.

In making this assessment, we look to "all of the communications and transactions between the parties before, during, and after the consummation of the contract." Ganis Corp. of California v. Jackson, 822 F.2d 194, 197 (1st Cir. 1987). A finding of jurisdiction will be more likely if we find "plus" factors in addition to the mere existence of a contract with a [Pennsylvania] resident. Id. "Plus" factors include, but are not limited to: (1) the forum State being the location to which payments under the contract were to be sent; (2) a choice of law provision in the contract selecting the forum State's laws as governing the transaction; and (3) the use of the plaintiff's form documents bearing its address in the forum State.

Staffing Network, 145 N.H. at 458. Here, the advertisement for sale was placed in New Hampshire, the vehicle was located in New Hampshire, payments were

sent to New Hampshire, and delivery of the allegedly defective vehicle was made in New Hampshire. There is no indication in the record before us that the contract included a choice of law provision selecting Pennsylvania's laws as governing the transaction, or that form documents bearing the plaintiff's address in Pennsylvania were used to form the contract. Unlike the situation in Lyme Timber Co. v. DSE Investors, 150 N.H. 557 (2004), here the parties did not embark upon a course of negotiations that "continued over an extended period of time." Lyme Timber, 150 N.H. at 561. Here there is a single, isolated transaction resulting from an Internet auction. We agree with the trial court that the contacts related to the contract do not support a finding of specific personal jurisdiction in Pennsylvania over the defendant.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,  
Clerk**